IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.997/2005.
(Banne Chand Vs. State of Rajasthan & Others)

DATE OF ORDER : April 6th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. S.S. Jodha for the petitioner.
Mr. Ashok Upadhyay, P.P. for the State.
Mr. G.R. Punia with Mr. P.K. Sharma for non-petitioners.

BY THE COURT :

Heard learned counsel for the parties.

In this revision petition, the petitioner seeks to challenge order dated 26.10.2005 passed by the Addl. Sessions Judge, Ratangarh in Criminal Revision No.25A/2004 whereby the revisional Court set aside the order dated 03.07.2004 passed by the Addl. Chief Judl. Magistrate, Ratangarh by which he had taken cognizance of offences under Sections 467, 468, 420,

471 and 120B, I.P.C. against non-petitioners No.2 to 6.

According to facts of the case, a complaint was filed by the petitioner before the Court of first instance on 25.03.2003 against non-petitioners No.2 to 6 alleging that a school of Rajiv Gandhi Swarn Jayanti Pathsala was sanctioned at the south of the town of Rajaldesar which is accordingly within the municipal limits of Rajaldesar. One appointment of a Shiksha Sahayogi was to be made in the said school by the Municipal Council, Rajaldesar; but, the non-petitioners No.3 and 4 issued a forged certificate showing the school in the limits of Gram Panchayat Simsia and mala fide non-petitioner No.6 appointed non-petitioner No.2 as Shiksha Sahyogi in the month of July 2002. The Court of first instance sent the complaint for investigation and, after investigation, the police filed negative final report in the matter. However, upon protest petition filed by the petitioner, after hearing arguments, the learned Magistrate chose to take cognizance of offences against non-petitioners No.2 to 6 as afore-noted.

It is submitted by learned counsel for the petitioner that revisional Court has erred in law in setting aside the order of cognizance. It is contended by learned counsel for the petitioner that the trial Court appreciated the evidence upon the protest petition filed by him in right perspective and,

therefore, cognizance of the offences was taken against the non-petitioners, however, the learned revisional Court has ignored the material evidence available on record and set aside the order of cognizance.

Learned counsel for the non-petitioners contended that the order of the revisional Court is based upon the material on record and arrived at the correct finding upon careful scrutiny of the documentary evidence placed on record. It is further contended that the learned revisional Court categorically observed that the certificate issued by the Gram Panchayat and Pradhan of the Panchayat Samiti cannot be prima facie said to be fake or fabricated because it is in consonance with the order of the State Government dated 22.09.2001. Further, both Sarpanch, Gram Panchayat Simsiya and Pradhan, Panchayat Samiti, Ratangarh acted in discharge of their official duty as public servants in compliance of the order of the State Government, therefore, in view of the provisions of Section 197, Cr.P.C. also cognizance could not be taken against them in the absence of proper sanction.

I have carefully perused the impugned order. Having heard the arguments of the parties and having elaborately discussed the evidence on record, the revisional Court has rightly found that prima facie offence is not made out against the non-petitioners.

After scanning the evidence on record the revisional Court found that the trial Court has lost sight of material facts and evidence on record and without assigning reasons for disagreement with the negative final report submitted by the investigating officer it chose to take cognizance of the offences against the non-petitioners which is illegal. I do not find any error or illegality in the order passed by the revisional Court.

The revision petition is dismissed.

(Gopal Krishan Vyas) J.